

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Theodore F. Charles

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Serial No. 74/701,576

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George E. Kersey for Theodore F. Charles.

John E. Michos, Trademark Examining Attorney, Law Office  
105 (Thomas G. Howell, Managing Attorney).

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Before Sams, Hanak and Bucher, Administrative Trademark  
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Applicant, Theodore F. Charles, an individual citizen  
of the United States of America, apparently doing business  
as "Investors Capital Corporation," has filed an  
application for registration of the mark "INVESTORS  
CAPITAL" for "investment brokerage services."<sup>1</sup>

The Trademark Examining Attorney issued a final  
refusal to register based upon Section 2(e)(1) of the

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<sup>1</sup> Serial No. 74/701,576, filed July 17, 1995, alleging use  
since June 1995.

Trademark Act, 15 U.S.C. §1052(e)(1), as made applicable by Section 3, 15 U.S.C. §1053, on the ground that applicant's mark, "INVESTORS CAPITAL," when used on investment brokerage services, is merely descriptive because it identifies a function or purpose of the services.

Applicant has appealed the final refusal to register. Briefs have been filed, but applicant did not request an oral hearing. We affirm the refusal to register.

Applicant operates as an independent, full-service broker/dealer. The file shows that much of his material is targeted to a client base comprising independent securities representatives as well as institutional or corporate investors. It appears from the record that applicant provides recommendations, investment advice, and research support. It further appears significant that applicant offers a variety of marketing tools and compliance services for independent representatives and investment advisors. In rendering this range of services, applicant has adopted and uses the mark "INVESTORS CAPITAL."

This alleged mark comprises the combination of two words used extensively throughout the financial world and specifically in applicant's field of financial securities.

In fact, there would not be a securities market without the participation of individual members of the investing public, known generally as "investors." Most investors invest through registered stockbrokers.

The Trademark Examining Attorney has made of record dictionary definitions showing that "capital" is the wealth of a business or an individual in terms of money or property. He has supported his position with numerous articles from financial publications showing descriptive use thereof in the financial community. We see that large brokerage firms and their representatives provide a vital bridge linking the capital of individual American investors to the capital markets. The LEXIS/NEXIS entries demonstrate that these capital flows meet the capital needs of the companies listed on the major stock exchanges.

Accordingly, applicant has merely combined two ordinary words widely used in his field, each having a well-understood meaning. We agree with the Trademark Examining Attorney that applicant has tried unsuccessfully to create a source indicator out of words infused with no new meaning when combined in this fashion. Applicant and its representatives are taking the capital of investors, or "investors' capital," and helping direct it to the capital

markets, while meeting the investment goals of individuals and organizations.

The LEXIS/NEXIS entries made of record contain examples of the use of "investor capital," "investor's capital" and investors' capital". However, it is immaterial for our purposes that applicant uses the plural, non-possessive formative rather than one of the three other options one would expect in the ordinary English formulation of this combined phrase (e.g., INVESTORS, and not INVESTOR, INVESTOR'S or INVESTORS').<sup>2</sup>

Certainly, common, ordinary words can be combined in a novel or unique way and thereby achieve a degree of protection denied to words when used separately. However, in adopting this specific formulation, applicant has not created any new double or incongruous meaning for the combined phrase. In short, the term "INVESTORS CAPITAL" does not require imagination, thought and perception to reach a conclusion as to the nature of the services and therefore it cannot be considered a suggestive term. See,

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<sup>2</sup> We also note that applicant has not followed a consistent presentation in the various forms of its trade name and alleged service mark. From a single page of "Financial Planning on Wall Street," applicant is seen as Investors Capital Corporation, Investors Capital Corp., Investors Capital (typed in the text, and in logos form with INVESTORS CAPITAL presented in a special font of outlined letters inside a rectangular device), Investors, and even "Investor's."

In re Capital Formation Counselors, Inc., 219 USPQ 916

(TTAB 1983) ["CAPITAL FORMATION COUNSELORS, INC." is merely descriptive of a feature or desired result of applicant's services of personal and corporate financial planning, and estate planning through the utilization of life insurance].

Other broker/dealers around the world would likely use such a descriptive term in connection with their own services or products.

Accordingly, we find that "INVESTORS CAPITAL" is merely descriptive of a feature, function or desired result of applicant's investment brokerage services for purposes of Section 2(e)(1) of the Act.

Decision: We affirm the refusal of the Trademark Examining Attorney to register this matter.

J. D. Sams

E. W. Hanak

D. E. Bucher

Administrative Trademark  
Judges, Trademark Trial and  
Appeal Board